

APPEAL NO. 030308
FILED MARCH 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 21, 2003. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 14% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR, arguing that the designated doctor placed him in the incorrect DRE category in the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). In addition, the claimant points to several typographical errors in the hearing officer's decision. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed, as modified.

Initially, we note, as did the claimant, that the hearing officer made several typographical errors in her Findings of Fact. Specifically, in Finding of Fact No. 2, the hearing officer states that "Claimant was assigned an [IR] of six (6%) percent and given a date of maximum medical improvement [MMI] of February 14, 2002 by the Commission selected Designated Doctor." However, the parties stipulated that the designated doctor assigned an MMI date of June 12, 2002, and that the claimant reached MMI in accordance with that report. In addition, the parties stipulated that Dr. P is the designated doctor selected by the Commission and the record reflects that Dr. P assigned a 14% IR to the claimant. Thus, Finding of Fact No. 2 will be modified to state that "Claimant was assigned an IR of fourteen (14%) percent and given a date of MMI of June 12, 2002, by the Commission-selected designated doctor." In Finding of Fact No. 4, the hearing officer improperly identifies the designated doctor; thus, Finding of Fact No. 4 will be modified to state that "[Dr. P] prepared his reports after examining the Claimant, reviewing the medical records, and utilizing the proper version of the AMA Guides."

In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's 14% IR. Specifically, the claimant argues that the designated doctor improperly placed him in DRE Category II and assigned him a 5% IR from Table 72. The claimant argues that he has radiculopathy as demonstrated by electrodiagnostic testing. Thus, the claimant argues that he would properly be placed in DRE Category III and assigned a 10% IR for his lumbosacral spine impairment. In support of his argument, the claimant presented a report from Dr. M, a chiropractor, who opined that the claimant should be assigned a 10% under Table

72 for DRE Category III lumbosacral spine impairment. In his report, Dr. M stated that the claimant's "case was discussed with [Dr. PR], neurologist, on 11-14-02. He is the physician who performed electro diagnostic studies on Jan. 2, 2001. He indicated that there is radiculopathy present in affected areas." In his report, the designated doctor noted that the claimant's neurological examination revealed "normal reflexes (patellar, short extensor and Achilles) with no sensory deficit on pinwheel examination of both lower extremities." In addition, the designated doctor stated that "[n]o atrophy [is] present." On page 3-102 of the AMA Guides, the description and verification of Lumbosacral Category III (radiculopathy) states that the "patient has significant signs of radiculopathy, such as loss of relevant reflex(es), or measured unilateral atrophy of greater than 2 cm above or below the knee, compared to measurements on the contralateral side at the same location." That section also provides that the "impairment may be verified by electrodiagnostic findings." In Texas Workers' Compensation Commission Appeal No. 030091-s, decided March 5, 2003, we noted that the "AMA Guides do not state that electrodiagnostic studies showing nerve root irritation, without loss of reflexes or atrophy, constitutes undeniable evidence of radiculopathy." Accordingly, we cannot agree that the designated doctor improperly applied the AMA Guides in placing the claimant in DRE Category II for his lumbosacral impairment instead of DRE Category III. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's IR.

At the hearing, the claimant also presented evidence from the claimant's treating doctor stating that the designated doctor erred in following the DRE model altogether to assign the claimant's lumbosacral impairment. The treating doctor states that the designated doctor should have calculated the claimant's lumbosacral impairment using the range of motion (ROM) model. In Texas Workers' Compensation Commission Appeal No. 030288-s, decided March 18, 2003, we noted that use of the DRE Model is not optional under the AMA Guides and specifically rejected the argument that the ROM model was a more appropriate method for calculating the IR as sufficient justification for not using the DRE model. We perceive no error in the designated doctor's use of the DRE model to calculate the claimant's lumbosacral impairment in this instance.

Finally, we find no merit in the claimant's assertion that the designated doctor erred in assigning a one percent whole person rating for the right knee partial meniscectomy. The claimant contends that he should have been assigned a rating for a total meniscectomy. However, the record reflects that the designated doctor, the treating doctor, and Dr. M all assigned a one percent rating for the right knee partial meniscectomy. As such, the claimant's evidence falls far short of demonstrating that the great weight of the other medical evidence is contrary to the designated doctor's rating under Table 64 for the right knee meniscectomy.

As modified, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Robert W. Potts
Appeals Judge